

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

State of Missouri ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
Plaintiff,)	
vs.)	Case No:
)	Division:
)	
)	
Access Resource Services, Inc.,)	
A Delaware Corporation,)	
also known as "Miss Cleo,")	
)	
Serve Registered Agent:)	
American Information Services, Inc.)	
One Southeast Third Avenue, 27th Floor)	
Miami, Florida 33131)	
)	
and)	
)	
Lexis-Nexis Corporate Services)	
3 Old Ruonick Lane)	
Dover, Delaware 19901)	
)	
Defendant.)	

**PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
AND PERMANENT INJUNCTIONS, CIVIL PENALTIES AND OTHER RELIEF**

Plaintiff states the following in support of this Petition for Temporary Restraining Order,
Preliminary and Permanent Injunctions, Civil Penalties and Other Relief.

INTRODUCTION

1. Defendant has violated or is violating Missouri's "Telemarketing No-Call List"
law (Mo. Rev. Stat. §§ 407.1095 through 407.1110) by making or causing to be made telephone
solicitations to the telephone lines of residential subscribers in the State of Missouri who have

given notice to the Attorney General of the subscribers' objections to receiving telephone solicitations.

PARTIES

2. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to common law, constitutional, and statutory authority of the Office of the Attorney General, including but not limited to Chapters 27 and 407 of the Revised Statutes of Missouri (as amended), and regulations promulgated thereunder.¹

3. Access Resource Services, Inc., is a Delaware corporation. Access Resource Services is also known as, and conducts business as, "Miss Cleo". Its principle place of business is not in Missouri, and on information and belief its principle place of business is in Miami, Florida.

4. Peter Stolz is a natural person who is not a resident of the State of Missouri. Upon information and belief, Mr. Stolz is the President of Access Resource Services, Inc.

5. Steven Feder is a natural person who is not a resident of the State of Missouri. Upon information and belief, Mr. Feder is the Owner of Access Resource Services, Inc.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter in this action pursuant to Chapters 27 and 407 of the Revised Statutes of Missouri (as amended), and Article V of the Missouri Constitution. Specifically, this Court has jurisdiction over this action under Section

¹ All statutory references are to Mo. Rev. Stat. (2000), as presently amended, unless otherwise indicated.

407.1107, which allows the Attorney General to seek injunctive relief and civil penalties for knowing violations or threatened knowing violations of Section 407.1098 or 407.1104

7. This Court has personal jurisdiction over the Defendant pursuant to Mo. Rev. Stat. §§ 407.1107.6 and 506.500.

8. Venue lies in the Circuit Court of the City of St. Louis in that the violations of the Missouri Merchandising Practices Act and the Telemarketing No-Call List Act described below occurred, among other places, in the City of St. Louis in the State of Missouri, and accordingly venue is proper in this circuit. Mo. Rev. Stat. § 407.100.7.

THE MISSOURI TELEMARKETING NO-CALL LIST ACT

9. Section 407.1098² provides, in pertinent part:

No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.

10. Section 407.1104 provides:

1. Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of such call, state clearly the identity of the person or entity initiating the call.

2. No person or entity who makes a telephone solicitation to the telephone line of a residential subscriber in this state shall knowingly use any method to block or otherwise circumvent such subscriber's use of a caller identification service.

11. Section 407.1107 provides, in pertinent part:

² This section, prohibiting telephone solicitations to consumers who have given notice to the attorney general of their objection to such telephone solicitations, became effective July 1, 2001. Mo. Rev. Stat. § 407.1098.2 (2000).

1. The attorney general may initiate proceedings relating to a knowing or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings may include, without limitation, an injunction, a civil penalty up to a maximum of five thousand dollars for each knowing violation and additional relief in any court of competent jurisdiction.

...

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates section 407.110 shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law.

12. A "residential subscriber" is defined as, "a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person." Mo. Rev. Stat. § 407. 1095(2).

13. A "telephone solicitation" is defined as "any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services" Mo. Rev. Stat. § 407.1095(3).

14. ADAD equipment, also known as "automatic dialing and announcing device," is "any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purposes of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed." 15 CSR 60-13.010(2)(A) (2001)³.

DEFENDANT'S TRADE PRACTICES

15. Defendant has engaged in at least ninety-four (94)⁴ violations of Missouri's Telemarketing No-Call List Act by making or causing to be made telephone solicitations to the

³ The Attorney General is statutorily empowered to promulgate rules and regulations governing the establishment of the No-Call database as he deems necessary and appropriate to fully implement the provisions of Sections 407.1095 to 407.1110. Mo. Rev. Stat. § 407.1101.2.

⁴ This petition is in five (5) counts. Each of the five (5) counts is representative of the ninety-four (94) violations by Access Resource Services, Inc., also known as Miss Cleo.

telephone lines of residential subscribers in the State of Missouri who have given notice to the Attorney General of the subscribers' objections to receiving telephone solicitations.

16. Specifically, Defendant has made telephone calls to residential subscribers in the State of Missouri offering psychic readings, tarot card readings and other supernatural services.

17. On at least five (5) occasions, Defendant has called residential subscribers stating that the subscriber could receive a free psychic reading.

COUNT I

18. Plaintiff hereby repleads, restates, realleges and incorporates by reference all the allegations contained in the preceding paragraphs above, as though fully set forth herein.

19. Ms. Elizabeth Sommer is a natural person who has subscribed to residential telephone service from a local exchange company.

20. Ms. Sommer gave notice to the Attorney General on or about April 26, 2001, that she objected to receiving telephone solicitations at her telephone line as it appears on the Attorney General's No-Call list. (See, Affidavit of Elizabeth Sommer, attached hereto as Exhibit A).

21. Ms. Sommer provided that notice to the Attorney General in accordance with rules promulgated by the Attorney General in that she called a toll-free number established by the Attorney General's Office for the purpose of recording a residential subscriber's notice of objection to receiving telephone solicitations and properly responded to voice prompts, such number being 866-NOCALL1 (866-662-2551) or 866-289-9633 (See, Affidavit of Elizabeth Sommer, attached hereto as Exhibit A).

22. Ms. Sommer's objection to receiving telephoning solicitations was, as of approximately April 26, 2001, included in a database maintained by the Attorney General's Office consisting of persons who object to receiving telephone solicitations (referred to herein as the "No-Call Database").

23. Ms. Sommer at no time revoked her objection.

24. A copy of the No-Call Database was available to Access Resource Services.

25. Access Resource Services failed to request a copy of the No-Call Database.

26. On or about July 17, 2001, Access Resource Services caused a telephone solicitation to be made to Mr. Sommer's telephone line.

27. The telephone solicitation referenced in the preceding paragraph was a voice communication over a telephone line from a live operator for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services.

28. On or about July 17, 2001, at approximately 11:00 a.m., Access Resource Services, through an agent identifying herself as "Miss Cleo," made a telephone solicitation to Ms. Sommer's telephone line.

29. Defendant did not have Mr. Sommer's prior express invitation or permission to make the telephone solicitation referenced above.

30. Neither Ms. Sommer, nor any other person living or residing with Ms. Sommer, had a business contact within the 180 days prior to the telephone solicitation referred to above or a business or personal relationship at the time of the telephone solicitation with Defendant.

31. Access Resource Services is not an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code.

32. Access Resource Services is not an entity over which a federal agency has regulatory authority to the extent that (a) subject to that authority, the entity is required to maintain a license, permit or certificate to sell or provide merchandise being offered through telemarketing and (b) that entity is required by law or rule to develop and maintain a no-call list.

33. Access Resource Services was not responding to a referral from a third party whom Ms. Sommer had previously contacted indicating that Ms. Sommer would welcome the call to Ms. Sommer's telephone number.

34. Access Resource Services and its agents were not working from its primary residence.

35. Neither Access Resource Services nor its agents are persons licensed by the State of Missouri to carry out a trade, occupation or profession.

COUNT II

36. Plaintiff hereby repleads, restates, realleges and incorporates by reference all the allegations contained in the preceding paragraphs above, as though fully set forth herein.

37. Ms. Carmen Coure is a natural person who has subscribed to residential telephone service from a local exchange company.

38. Ms. Coure gave notice to the Attorney General on or about December 15, 2000, that she objected to receiving telephone solicitations at his telephone line as it appears on the Attorney General's No-Call list. (See, Affidavit of Carmen Coure, attached hereto as Exhibit B).

39. Ms. Coure provided that notice to the Attorney General in accordance with rules promulgated by the Attorney General in that she called a toll-free number established by the Attorney General's Office for the purpose of recording a residential subscriber's notice of

objection to receiving telephone solicitations and properly responded to voice prompts, such number being 866-NOCALL1 (866-662-2551) or 866-289-9633 (See, Affidavit of Carmen Coure, attached hereto as Exhibit B).

40. Ms. Coure's objection to receiving telephoning solicitations was, as of approximately December 15, 2000, included in the No-Call database maintained by the Attorney General's Office consisting of persons who object to receiving telephone solicitations.

41. Ms. Coure at no time revoked her objection.

42. A copy of the No-Call Database was available to Access Resource Services.

43. Access Resource Services failed to request a copy of the No-Call Database.

44. On or about July 10, 2001, Access Resource Services caused a telephone solicitation to be made to Ms. Coure's telephone line.

45. The telephone solicitation referenced in the preceding paragraph was a voice communication over a telephone line from a live operator for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services.

46. On or about July 10, 2001, at approximately 4:00 p.m., Access Resource Services, through an agent identifying herself as "Miss Cleo," made a telephone solicitation to Ms. Coure's telephone line.

47. Defendant did not have Ms. Coure's prior express invitation or permission to make the telephone solicitation referenced above.

48. Neither Ms. Coure, nor any other person living or residing with Ms. Coure, had a business contact within the 180 days prior to the telephone solicitation referred to above or a business or personal relationship at the time of the telephone solicitation with Defendant.

49. Access Resource Services is not an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code.

50. Access Resource Services is not an entity over which a federal agency has regulatory authority to the extent that (a) subject to that authority, the entity is required to maintain a license, permit or certificate to sell or provide merchandise being offered through telemarketing and (b) that entity is required by law or rule to develop and maintain a no-call list.

51. Access Resource Services was not responding to a referral from a third party whom Ms. Coure had previously contacted indicating that Ms. Coure would welcome the call to Ms. Coure's telephone number.

52. Access Resource Services and its agents were not working from its primary residence.

53. Neither Access Resource Services nor its agents are persons licensed by the State of Missouri to carry out a trade, occupation or profession.

COUNT III

54. Plaintiff hereby repleads, restates, realleges and incorporates by reference all the allegations contained in the preceding paragraphs above, as though fully set forth herein.

55. Mr. Charles Wallace is a natural person who has subscribed to residential telephone service from a local exchange company.

56. Mr. Wallace gave notice to the Attorney General on or about April 9, 2001, that he objected to receiving telephone solicitations at his telephone line as it appears on the Attorney General's No-Call list. (See, Affidavit of Charles Wallace, attached hereto as Exhibit C).

57. Mr. Wallace provided that notice to the Attorney General in accordance with rules promulgated by the Attorney General in that he called a toll-free number established by the Attorney General's Office for the purpose of recording a residential subscriber's notice of objection to receiving telephone solicitations and properly responded to voice prompts, such number being 866-NOCALL1 (866-662-2551) or 866-289-9633 (See, Affidavit of Charles Wallace, attached hereto as Exhibit C).

58. Mr. Wallace's objection to receiving telephoning solicitations was, as of approximately April 9, 2001, included in the No-Call database maintained by the Attorney General's Office consisting of persons who object to receiving telephone solicitations.

59. Mr. Wallace at no time revoked his objection.

60. A copy of the No-Call Database was available to Access Resource Services.

61. Access Resource Services failed to request a copy of the No-Call Database.

62. On or about July 16, 2001, Access Resource Services caused a telephone solicitation to be made to Mr. Wallace's telephone line.

63. The telephone solicitation referenced in the preceding paragraph was a voice communication over a telephone line from a live operator for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services.

64. On or about July 16, 2001, at approximately 10:20 a.m., Access Resource Services, through an agent identifying herself as "Miss Cleo," made a telephone solicitation to Mr. Wallace's telephone line.

65. Defendant did not have Mr. Wallace's prior express invitation or permission to make the telephone solicitation referenced above.

66. Neither Mr. Wallace, nor any other person living or residing with Mr. Wallace, had a business contact within the 180 days prior to the telephone solicitation referred to above or a business or personal relationship at the time of the telephone solicitation with Defendant.

67. Access Resource Services is not an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code.

68. Access Resource Services is not an entity over which a federal agency has regulatory authority to the extent that (a) subject to that authority, the entity is required to maintain a license, permit or certificate to sell or provide merchandise being offered through telemarketing and (b) that entity is required by law or rule to develop and maintain a no-call list.

69. Access Resource Services was not responding to a referral from a third party whom Mr. Wallace had previously contacted indicating that Mr. Wallace would welcome the call to Mr. Wallace's telephone number.

70. Access Resource Services and its agents were not working from its primary residence.

71. Neither Access Resource Services nor its agents are persons licensed by the State of Missouri to carry out a trade, occupation or profession.

COUNT IV

72. Plaintiff hereby repleads, restates, realleges and incorporates by reference all the allegations contained in the preceding paragraphs above, as though fully set forth herein.

73. Ms. Susan Boyd is a natural person who has subscribed to residential telephone service from a local exchange company.

74. Ms. Boyd gave notice to the Attorney General on or about December 18, 2000, that she objected to receiving telephone solicitations at her telephone line as it appears on the Attorney General's No-Call list. (See, Affidavit of Susan Boyd, attached hereto as Exhibit D).

75. Ms. Boyd provided that notice to the Attorney General in accordance with rules promulgated by the Attorney General in that she called a toll-free number established by the Attorney General's Office for the purpose of recording a residential subscriber's notice of objection to receiving telephone solicitations and properly responded to voice prompts, such number being 866-NOCALL1 (866-662-2551) or 866-289-9633 (See, Affidavit of Susan Boyd, attached hereto as Exhibit D).

76. Ms. Boyd's objection to receiving telephoning solicitations was, as of approximately December 18, 2000, included in the No-Call database maintained by the Attorney General's Office consisting of persons who object to receiving telephone solicitations.

77. Ms. Boyd at no time revoked her objection.

78. A copy of the No-Call Database was available to Access Resource Services.

79. Access Resource Services failed to request a copy of the No-Call Database.

80. On or about July 13, 2001, Access Resource Services caused a telephone solicitation to be made to Ms. Boyd's telephone line.

81. The telephone solicitation referenced in the preceding paragraph was a voice communication over a telephone line from a live operator for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services.

82. On or about July 13, 2001, at approximately 5:36 p.m. Access Resource Services through an agent identifying herself as "Miss Cleo," made a telephone solicitation to Ms. Boyd's telephone line.

83. Defendant did not have Ms. Boyd's prior express invitation or permission to make the telephone solicitation referenced above.

84. Neither Ms. Boyd, nor any other person living or residing with Ms. Boyd, had a business contact within the 180 days prior to the telephone solicitation referred to above or a business or personal relationship at the time of the telephone solicitation with Defendant.

85. Access Resource Services is not an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code.

86. Access Resource Services is not an entity over which a federal agency has regulatory authority to the extent that (a) subject to that authority, the entity is required to maintain a license, permit or certificate to sell or provide merchandise being offered through telemarketing and (b) that entity is required by law or rule to develop and maintain a no-call list.

87. Access Resource Services was not responding to a referral from a third party whom Ms. Boyd had previously contacted indicating that Ms. Boyd would welcome the call to Ms. Boyd's telephone number.

88. Access Resource Services and its agents were not working from its primary residence.

89. Neither Access Resource Services nor its agents are persons licensed by the State of Missouri to carry out a trade, occupation or profession.

COUNT V

90. Plaintiff hereby repleads, restates, realleges and incorporates by reference all the allegations contained in the preceding paragraphs above, as though fully set forth herein.

91. Ms. Melissa Yount is a natural person who has subscribed to residential telephone service from a local exchange company.

92. Ms. Yount gave notice to the Attorney General on or about January 24, 2001 that he objected to receiving telephone solicitations at her telephone line as it appears on the Attorney General's No-Call list. (See, Affidavit of Melissa Yount, attached hereto as Exhibit E).

93. Ms. Yount provided that notice to the Attorney General in accordance with rules promulgated by the Attorney General in that she called a toll-free number established by the Attorney General's Office for the purpose of recording a residential subscriber's notice of objection to receiving telephone solicitations and properly responded to voice prompts, such number being 866-NOCALL1 (866-662-2551) or 866-289-9633 (See, Affidavit of Melissa Yount, attached hereto as Exhibit E).

94. Ms. Yount's objection to receiving telephoning solicitations was, as of approximately January 24, 2001, included in the No-Call database maintained by the Attorney General's Office consisting of persons who object to receiving telephone solicitations.

95. Ms. Yount at no time revoked her objection.

96. A copy of the No-Call Database was available to Access Resource Services.

97. Access Resource Services failed to request a copy of the No-Call Database.

98. On or about July 16, 2001, Access Resource Services caused a telephone solicitation to be made to Ms. Yount's telephone line.

99. The telephone solicitation referenced in the preceding paragraph was a voice communication over a telephone line from a live operator for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services.

100. On or about July 16, 2001, at approximately 6:18 p.m., Access Resource Services, through an agent identifying herself as "Miss Cleo," made a telephone solicitation to Ms. Yount's telephone line.

101. Defendant did not have Ms. Yount's prior express invitation or permission to make the telephone solicitation referenced above.

102. Neither Ms. Yount, nor any other person living or residing with Ms. Yount, had a business contact within the 180 days prior to the telephone solicitation referred to above or a business or personal relationship at the time of the telephone solicitation with Defendant.

103. Access Resource Services is not an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code.

104. Access Resource Services is not an entity over which a federal agency has regulatory authority to the extent that (a) subject to that authority, the entity is required to maintain a license, permit or certificate to sell or provide merchandise being offered through telemarketing and (b) that entity is required by law or rule to develop and maintain a no-call list.

105. Access Resource Services was not responding to a referral from a third party whom Ms. Yount had previously contacted indicating that Ms. Yount would welcome the call to Ms. Yount's telephone number.

106. Access Resource Services and its agents were not working from its primary residence.

107. Neither Access Resource Services nor its agents are persons licensed by the State of Missouri to carry out a trade, occupation or profession.

**BASIS FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY
INJUNCTION**

108. Section 407.100 and Section 407.1107.1 provide this Court with the authority to issue a temporary restraining order and to fashion appropriate remedies necessary to grant relief in actions brought under the Merchandising Practices Act and the Telemarketing No-Call List Act.

109. The Attorney General has investigated and is continuing to investigate the above described violations of Sections 407.1098 and/or 407.1104 and now seeks an immediate temporary restraining order to protect the public and to carry out the mandate of Chapter 407.

110. Once the Court finds that a defendant has engaged in, is engaging in, or is about to engage in a practice unlawful pursuant to Chapter 407, potential harm to the public is presumed for purposes of injunctive relief under Chapter 407.

111. Upon information and belief, Defendant presently retains the ability to commit further violations of the Merchandising Practices Act and the Telemarketing No-Call List Act.

112. Plaintiff seeks a Temporary Restraining Order and a Preliminary Injunction during the pendency of this action to protect the public from these ongoing unlawful and fraudulent practices.

113. Although not a prerequisite for the issuance of a Temporary Restraining Order pursuant to Chapter 407, Plaintiff, State of Missouri, and the public will suffer immediate and

irreparable injury, loss, and/or damage, if the State's Petition for Temporary Restraining Order is not granted in that Defendant will continue to engage in the unlawful practices alleged above.

114. Although not a prerequisite for the issuance of a Temporary Restraining Order pursuant to Chapter 407, Plaintiff has no adequate remedy at law.

115. Notice of this Petition for Temporary Restraining Order and Permanent Injunction was given to Defendant by letter faxed the 20th day of July, 2001, to (302) 736 -5620.

116. Suits instituted by the state are exempt from bond requirements pursuant to Rule 92.02(d) of the Missouri Rules of Civil Procedure. Plaintiff, therefore, is not required to post a bond.

RELIEF

Plaintiff, the State of Missouri, respectfully asks this Court to issue its Order:

1. Finding that Defendant has violated the provisions of § 407.1098 and/or § 407.1104;
2. Finding that Plaintiff, State of Missouri, and the public will suffer irreparable injury, loss, and/or damage in the absence of this Order;
3. Prohibiting and enjoining Defendant from making or causing to be made telephone solicitations to the telephone lines of residential subscribers in the State of Missouri who have given notice to the Attorney General of the subscribers' objections to receiving telephone solicitations;
4. Requiring Defendant to pay, as a civil penalty, to the order of the State of Missouri, five thousand dollars (\$5,000.00) for each and every violation of § 407.1098 and/or § 407.1104, pursuant to § 407.1107;

5. Requiring Defendant to pay to Plaintiff an amount equal to the cost of investigation and prosecution of this action, including reasonable attorneys' fees and the costs of administering the restitution fund for payments to consumers as requested above, as provided for by § 407.130;

6. Requiring Defendant to pay all court costs incurred in this cause of action, as provided for by § 407.130; and

7. Any and all such additional and further orders as this Court deems just or otherwise appropriate.

Respectfully submitted,

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